Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O.No. 164 of 2002

M/s New India Assurance Company Ltd.
Through its Divisional Manager,
Haldwani, District Nainital.

..... Appellant.

Versus

(1) Hari Narain Shukla
S/o Sri Ram Abhilash Shukla,
(2) Vikash S/o Sri Hari Narain Shukla
(3) Km. Pranka D/o Sri Hari Narain Shukla,
All residents of H.M.T. Colony, Ranibagh,
Distt. –Nainital.

..... Claimants/Respondents.

(4) Sri Tek Chandra Kapoor
S/o Sri Hukum Chandra
R/o 112, Kaladhungi Raod,
Bhola Nath Bagh, Haldwani, Distt. Nainital

..... Respondent.

.....

Sri Tanveer Alam Khan, learned counsel for the appellant.
None appeared for the respondents.

Date: 13th September, 2004.

Hon'ble P.C. Verma, J.,
Hon'ble B.S. Verma, J.

This appeal has been preferred by the New India Assurance Company under Section 173 of the Motor Vehicles Act against the judgment and award dated 25.06.2002 passed by the Motor Accident Claims Tribunal/Additional District Judge, Haldwani in Motor Accident Claim Petition No. 136 of 2000, whereby the claim petition has been allowed for a compensation of Rs. 4,19,000/- against the appellant alongwith interest at the rate of 9% per annum from the date of claim petition till the date of payment.

2- Brief facts giving rise to this appeal are that on 9.5.1999 at 9.30 p.m. claimant Hari Narain Shikla was going alongwith his wife and children to his house situate in H.M.T.factory campus, Ranibagh by his scooter. Near the military check post tyre of the scooter was punctured. He stopped the scooter and replaced the tyre. When he started the scooter to proceed for his house, truck No. UP 02C/5501, which was being driven by its driver very rashly and negligently, hit the scooter from its back side. Due to this collision claimant Hari Narain Shukla, his wife and children sustained injuries. Deceased Smt.Meenakshi Devi-wife of the claimant Hari Narain died after two hours of the accident when she was getting treatment due to injuries received in the said accident. She was 34 years old at the time of accident and was earning Rs. 5000/- per month by doing domestic work. The claimants (husband and children of the deceased Meenakshi Devi) filed the claim petition for compensation due to death of deceased in the said accident.

3- The opposite parties contested the claim petition before the Tribunal denying all the allegations of the claim petition by filing their separate written statements. The Opp.party No.1 stated that the said truck was insured with the Opp.party No.2 New India Assurance Company and liability to pay the compensation is of the Insurance Company. The Tribunal, on the pleadings of the parties framed necessary issues and after recording evidence, oral and documentary, allowed the claim petition accordingly. Feeling aggrieved, the Insurance Company has come up in this appeal.

4- The learned counsel for the appellant has submitted before us that the appellant has a right to contest the case on merit under Section 170 of the Motor Vehicles Act and, therefore, argued that the Tribunal has not properly appreciated the evidence on record to determine the quantum of compensation. The learned counsel for the appeal could

not indicate that permissions was obtained under Section 170 of the Motor Vehicles Act from the Tribunal. In this case, the owner of the offending vehicle has contested the case before the Tribunal. Neither there is any permission of the Tribunal under Section 170 of the Motor Vehicles Act, nor there is any finding that there has been collusion between the owner and the claimants. Therefore, the appellant-Insurance Company cannot be allowed to challenge the quantum of compensation by filing the present appeal. The appeal can be field by the Insurance Company on limited grounds under the provisions of the Act. we are fortified in our view by the Apex Court Judgment in the case of ***National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others, reported in (2002) 7, Supreme Court Cases, Page 456.*** In that case, it has been observed by the Apex Court that, ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is no permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle."*** Thus in view of the above law laid down by the Apex Court, none of the contentions raised by the lenred counsel for the appellant is tenable and has to be ignored outright.

5- In view of the aforesaid discussion, the appeal has no merit and is hereby dismissed. The impugned judgment and award is upheld. No order as to costs. Amount, if deposited in the appeal, shall be remitted to the Tribunal concerned.

(B.S. Verma, J.) **(P.C. Verma, J.)**

13.09.2004
P.Singh